



1 need to request documents from defendant Hasmet Celik and to depose him, and also to  
 2 depose some of the workers.

3       On July 29, 2005, the Court conducted a case management conference, at which  
 4 time the Court set a discovery cutoff date of January 13, 2006, as well as a trial date of  
 5 June 26, 2006. (See Civil Minutes, filed July 29, 2006.) Rule 16(b) provides that a pretrial  
 6 scheduling order “shall not be modified except upon a showing of good cause.” See Fed.  
 7 R. Civ. P. 16(b). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of  
 8 the party seeking the amendment.” Johnson v. Mammoth Recreations, Inc., 975 F. 2d 604,  
 9 609 (9<sup>th</sup> Cir. 1992). “Although the existence or degree of prejudice to the party opposing  
 10 the modification might supply additional reasons to deny a motion, the focus of the inquiry  
 11 is upon the moving party’s reasons for seeking modification.” Id. “If that party was not  
 12 diligent, the inquiry should end.” Id.; see, e.g., Zivkovic v. Southern California Edison Co.,  
 13 302 F. 3d 1080, 1087-88 (9th Cir. 2002) (holding district court properly denied plaintiff’s  
 14 request to modify scheduling order to extend discovery cutoff, where plaintiff “did not  
 15 demonstrate diligence in complying with the dates set by the district court”). Consequently,  
 16 the threshold issue is whether plaintiffs were diligent prior to the January 13, 2006  
 17 discovery cutoff.

18       Plaintiffs were aware, no later than September 13, 2004, months before the instant  
 19 action was commenced,<sup>1</sup> of defendants’ position that the workers in question had not  
 20 performed covered work and that the manner in which such work was described on their  
 21 timecards was not, contrary to plaintiffs’ position, dispositive of the issue. (See Hodson  
 22 Decl. Exs. B-E.) Indeed, plaintiffs concede that they prepared their case “in light of  
 23 [d]efendants’ defenses.” (See Pls.’ Mot. at 5:3-5.) Thus, plaintiffs cannot claim surprise as  
 24 to the nature of the defense, nor do they do so. Further, the discovery that plaintiffs failed  
 25 to timely propound is not of a complicated nature, nor does it appear to be of the type that  
 26 would be time-consuming to propound. Rather, plaintiffs argue that an extension of the  
 27

---

28       <sup>1</sup>Plaintiffs filed their complaint on February 8, 2005.

1 discovery deadline, and the trial, is necessitated by "unique circumstances of [p]laintiffs'  
2 counsel." (See Pls.' Mot. at 4:22-23.)

3 According to plaintiffs, the unique situation was that Tracy Mainguy ("Mainguy"),  
4 plaintiffs' initial counsel, went on a pregnancy leave in October 2005, and that Concepcion  
5 E. Lozano-Batista ("Lozano-Batista"), the attorney who thereafter primarily worked on the  
6 case on behalf of current counsel Weinberg, Roger & Rosenfeld, went on a pregnancy  
7 leave in late February 2006. Plaintiffs fail to explain, however, why Mainguy was unable to  
8 propound the subject discovery before her maternity leave commenced. Likewise, plaintiffs  
9 fail to explain why Lozano-Batista was unable to propound the subject discovery before  
10 January 13, 2006, or, if she was,<sup>2</sup> why other attorneys with Weinberg, Roger & Rosenfeld  
11 were unable to timely propound the subject discovery. In sum, there is an insufficient  
12 showing of diligence, and, consequently, plaintiffs have not shown the requisite good cause  
13 to warrant a continuance. See Johnson, 975 F. 2d at 609.

14 **CONCLUSION**

15 For the reasons stated, plaintiffs' motion to continue is hereby DENIED.

16 **IT IS SO ORDERED.**

17  
18 Dated: April 20, 2006

  
19 MAXINE M. CHESNEY  
United States District Judge

20  
21  
22  
23  
24  
25 <sup>2</sup>According to plaintiffs, Lozano-Batista went on leave at "the end of February," and  
26 was "on a limited schedule" for "several weeks prior to her leave." (See Phillips Decl. ¶ 5.)  
27 As noted, the discovery cutoff was January 13, 2006. Assuming Lozano-Batista's limited  
28 schedule negatively affected her ability to propound the subject discovery, the limited  
schedule appears to have begun after the discovery cutoff and thus is of little to no  
consequence in determining whether plaintiffs were diligent prior to the expiration of the  
discovery cutoff.